

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of) MM Docket No. 99-153
)
READING BROADCASTING, INC.) File No. BRCT-940630KE
)
For Renewal of License of)
Station WTVE(TV), Channel 51)
Reading, Pennsylvania)
)
and)
)
ADAMS COMMUNICATIONS) File No. BPCT-940630KG
CORPORATION)
)
For Construction Permit for a New)
Television Station to Operate on)
Channel 51, Reading, Pennsylvania)

To: Magalie Roman Salas, Secretary
for direction to
The Honorable Richard L. Sippel
Administrative Law Judge

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**CONSOLIDATED REPLY
OF ADAMS COMMUNICATIONS CORPORATION**

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SUMMARY

The factual and legal materials which Reading Broadcasting, Inc. ("RBI") presents in its Opposition to the Motion to Enlarge filed by Adams Communications Corporation ("Adams") establish that unauthorized transfers of control of RBI did indeed occur.

The initial Partel Agreement represents an unauthorized transfer of control as RBI itself defines that time: that agreement conveyed to Partel (and its sole principal, Micheal Parker) authority to make personnel decisions, one of the indicia which even RBI acknowledges reflects control as defined by the Commission. More damning, the Partel Agreement gave Partel a veto power over any and all expenditures -- Partel was contractually authorized to control RBI's finances and operations simply by preventing any expenditures at all.

Beyond the Partel Agreement, the materials which RBI has thus far presented (with extreme reluctance) also demonstrate that Parker, faced with the termination of the Partel Agreement by the RBI Board of Directors, responded simply by issuing more than 360,000 shares of RBI stock and distributing those shares so as to place more than 50% in the hands of parties who had not previously controlled RBI and who had not been approved by the Commission in a long form transfer application. RBI has thus far in this case been extremely tight-fisted with respect to matters relating to its ownership -- to date, RBI still has not produced for Adams the RBI stock register, even though RBI has been ordered to do so by the Presiding Judge. Nevertheless, by careful review of the massive set of attachments accompanying the RBI Opposition and by cross-referencing certain information in those

attachments against other information previously filed by RBI with the Commission, it is possible to determine that, on October 15, 1991, Parker issued more than 360,000 shares of RBI; it is also possible to determine to whom those shares were distributed.

That analysis establishes that, in October, 1991, Parker effectuated a transfer of control of RBI without Commission authorization.

The surrounding facts and circumstances strongly indicate that this was not any inadvertent oversight on Parker's part. He had demonstrated an acute awareness of the significance, for Commission purposes, of crossing the 50% ownership mark, and must therefore be deemed to have issued the stock notwithstanding the fact that that issuance constituted a transfer of control.

The steps he took after the issuance of the stock further confirm that Parker knew what he was doing. Rather than alert the Commission to the stock issuance, he instead called a meeting of holders of the newly-issued stock. At that meeting he removed the RBI directors and replaced them with a new board which he himself nominated. That newly-elected board then met to remove all other RBI officers and replace them with Parker. And then, just two weeks later, Parker signed all portions of a transfer of control application which made no reference at all to the issuance of the new stock or the election of new officers or directors. Instead, the application clearly appears designed to create the impression that no changes at all had occurred since August, 1991 or would occur until after the application were granted.

The issuance of stock alone constituted yet another unauthorized transfer of control.

In its Opposition RBI continues to cling to the claim that, in fact, a majority of RBI's

stock never changed hands until after the Commission granted RBI's long-form transfer application in February, 1992. As noted, that claim is not likely to last long in view of the documentary materials which RBI (probably inadvertently) has already made available.

But even if RBI were correct and no transfer could be found in the issuance of stock, the October, 1991 change in the board of directors is yet another separate unauthorized transfer of control. While RBI would characterize that change as a private proxy fight outside the Commission's jurisdiction, that claim ignores the fact that the Commission has announced a policy specifically directed to proxy fights which result in precisely the kind of "precipitous" change in a majority of a corporation's board that we see here. Under that policy, the licensee is required to submit the members of the proposed board on a short-form application. RBI did not take that path, either.

As to the misrepresentation/lack of candor, even a cursory review of RBI's actions, and particularly the timing of those actions, makes clear that RBI was trying to conceal its true situation from the Commission. Unfortunately, those efforts have continued unabated even into this hearing -- as is demonstrated by the fact that, in its Opposition, RBI makes factual statements concerning its stock ownership which are completely inconsistent with statements which RBI made to the Presiding Judge on the same topics less than five months ago.

Addition of unauthorized transfer of control and misrepresentation/lack of candor issues is clearly warranted.

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1. Adams Communications Corporation ("Adams") hereby replies to the Oppositions filed respectively by Reading Broadcasting, Inc. ("RBI") and the Enforcement Bureau ("Bureau") in response to Adams's Motion to Enlarge Issues (Unauthorized Transfer of Control and Misrepresentation/Lack of Candor).

Preliminary Statement

2. Both RBI and the Bureau chide Adams for relying on RBI's minutes but not attaching copies of those minutes to its Motion. That argument is remarkable because both RBI and the Bureau are well aware that, at the time that Adams filed its Motion, it did not have copies of those minutes available to it because the Presiding Judge had theretofore permitted Adams the right only to review those minutes, not to make copies of them. Since Adams, through that review, became aware of facts which supported a motion to enlarge, Adams was required to file its motion within the time specified by the rules or risk losing the right to do so because of untimeliness. *See* Section 1.229(b)(3). Accordingly, Adams filed its Motion, relying on notes of the minutes which counsel had made with the Presiding Judge's permission. ^{1/}

3. Such an approach was fair to RBI and the Presiding Judge, since both had access to the underlying minutes as of the filing of Adams's Motion. The Bureau's criticism

^{1/} Adams's notes concerning the minutes proved to be highly accurate, as review of the minutes themselves demonstrates. Nevertheless, RBI accuses Adams of "blatant disregard for the truth" because, for example, Adams asserted that the minutes of a May 8, 1990 meeting indicated that a motion to terminate a Management Services Agreement was tabled without further action. *See* RBI Opposition at 17, n. 9. RBI does not deny that the May 8, 1990 minutes (which were cited in support of Adams's assertion) in fact completely support Adams's assertion. *See* Attachment A (5/8/90 minutes). Rather, RBI is exercised because Adams did not also refer to the minutes of a subsequent meeting, at which the motion was withdrawn. But the point of Adams's assertion was simply to illustrate that the relationship between RBI and Parker was stormy, a fact unquestionably demonstrated by the May 8, 1990 minutes. RBI's frantic, hair-trigger willingness to find "blatant disregard for the truth" here is far-fetched.

of Adams is especially odd in view of the fact that, after Adams did obtain copies of some (but not all) of the minutes which formed the basis of Adams's Motion, Adams provided copies to the Bureau. *See* Attachment B. The letter transmitting those copies to the Bureau explained that the Bureau was being sent copies of all of the supporting minutes which RBI had provided; it specifically noted that complete copies of several of the cited minutes were *not* provided by RBI and were therefore not available to Adams to provide to the Bureau. In any event, in order to assure that the record is complete, Adams is attaching hereto copies of the minutes cited in its Motion to the extent that RBI has provided copies of those minutes. ^{2/}

I. Review Of The Facts As They Have Continued To Develop Through RBI's Opposition

4. Despite the best (and continuing) efforts of RBI, the facts -- as opposed to RBI's unsupported "spin" -- have gradually emerged and are continuing to emerge. Indeed, as set forth below, the plethora of documents attached to RBI's Opposition includes previously undisclosed information which clearly demonstrates that RBI has not only engaged in one or more unauthorized transfers of control, but that it engaged in misrepresentation

^{2/} Attachments A and C-I hereto include minutes (as provided to Adams by RBI) of the following meetings:

- August 1, 1989 Directors' Meeting
- May 8, 1990 Directors' Meeting
- October 30, 1991 Shareholders' Meeting
- June 1, 1992 Directors' Meeting
- August 7, 1992 Directors' Meeting (erroneously referred to in Adams's motion as August 6, 1992)
- February 1, 1994 Shareholders' Meeting
- August 1, 1989 Shareholders' Meeting
- September 13, 1989 Directors' Meeting

Minutes of the October 30, 1991 Directors' Meeting were also cited in Adams's Motion; however, RBI has not produced those minutes at all.

concerning that transfer for years thereafter. The new information even establishes that RBI has repeatedly sought to deceive the Presiding Judge in this very proceeding concerning RBI's misconduct.

5. Certain facts are now universally acknowledged. A graphic depiction of the most noteworthy of those facts is included as an appendix to this Reply. We highlight certain of those facts here.

A. *June, 1989-August, 1991 - The commencement of the relationship among Parker, Partel and RBI*

6. In June, 1989 RBI entered into an agreement ("the Partel Agreement") with Partel, Inc. ("Partel"), a corporation owned and controlled by Micheal Parker. Pursuant to that agreement, Partel was entitled to a significant share (25%) of RBI's stock, Parker was to be elected an officer and director of RBI, and Partel (and Parker) were to operate Station WTVE(TV). The Partel Agreement also provided that Parker would have "the authority to make personnel decisions". RBI Opposition, Exhibit D, p. 4. Moreover, while the Partel Agreement did not accord Parker/Partel authority to sign corporate checks, it gave Parker/Partel control over RBI's finances: according to the Partel Agreement, RBI "shall not write checks without Parker's prior approval." RBI Opposition, Exhibit D, p. 4. Parker himself referred to this as a "veto power over any expenditures made by the Corporation." RBI Opposition, Exhibit Y, p. 3. Even Linton, a shareholder (and former officer and counsel) of RBI, viewed this provision as giving Partel "a veto power over expenditures." RBI Opposition, Exhibit X, p. 86.

7. The Partel Agreement was ratified by RBI's shareholders and directors in August-September, 1989, and Parker was elected an officer and director in August, 1989.

However, neither the Partel Agreement nor Parker's election was reported to the Commission in 1989 or 1990. In April, 1991, Parker's official positions were disclosed in an Annual Ownership Report, but that report made no mention of the Partel Agreement.^{3/} In a short form Form 316 assignment application ("August, 1991 316") filed in August, 1991, Partel was listed as a prospective shareholder (upon consummation of the transactions proposed in the application), but again, no mention of the underlying Partel Agreement or Parker's previous history of misconduct was included in that application.^{4/}

B. October 15, 1991 - Parker issues 360,000+ shares of RBI stock, a majority of which is distributed to "new" shareholders.

8. In the August, 1991 316, RBI proposed the addition of several new shareholders, including Partel (which was proposed to own 29.69% of RBI's stock, substantially more than any other single shareholder). The application stated that, notwithstanding these newcomers, more than 56% of RBI's stock would continue to be held by parties who had held control of RBI prior to its bankruptcy (which was initiated in 1986) - hence, a short form application was said to be appropriate. See RBI Opposition, Exhibit J. The August, 1991 316 was granted on August 27, 1991, but the transactions proposed therein were not consummated.

9. As is amply illustrated in RBI's minutes, the relationship between the original

^{3/} The 1991 Ownership Report also made no mention of Parker's previous history of adjudicated misconduct before the Commission.

^{4/} At Footnote 2 of its Motion to Enlarge, Adams indicated mistakenly that the Commission may have been alerted to the existence of the Partel Agreement in August, 1991. Upon detailed review of the August, 1991 316, however, Adams has determined that Adams's statement was wrong. At most, the August, 1991 316 indicates that Partel was proposed to become a shareholder of RBI, marking the first time that Partel was formally linked in any capacity with RBI as far as the Commission was aware. But the application makes no reference at all to the Partel Agreement or the fact that Partel would be entitled to any ownership interest in RBI as a result of that agreement.

RBI directors and Parker was stormy. *E.g.*, Attachment A (Minutes of May 8, 1990 Directors' Meeting). On September 14, 1991, RBI shareholders held a meeting at which they elected new directors, who then terminated the Partel Agreement.^{5/} If the Partel Agreement were terminated, then Partel would presumably not be entitled to the 25% interest in RBI which was provided for therein.

10. Notwithstanding the termination of the Partel Agreement, Parker took it upon himself to issue RBI shares. The legality of that issuance was disputed by, *inter alia*, Linton, who was RBI's secretary and counsel. *See* RBI Opposition, Exhibit V, pp. 31-32.^{6/}

11. In its Opposition, RBI acknowledges for the first time that, on October 15, 1991, Parker issued to Partel shares representing more than 20% of RBI. RBI Opposition at 19, n. 11. RBI is, however, noticeably silent as to what other shares Parker issued on that date. Despite RBI's silence -- and, indeed, despite its continuing effort to withhold

^{5/} RBI acknowledges that the September 14, 1991 meeting occurred, but characterizes it as an inconsequential meeting of "an insurgent group of [RBI] shareholders." RBI Opposition at 18. While minutes of the September 14, 1991 meeting are said to have existed (*see* RBI Opposition, Exhibit V, p. 5), no such minutes have been produced by RBI. But careful inspection of other documents provided by RBI with its Opposition now establishes that the directors elected at the September 14, 1991 meeting were Aurandt, Parker, Linton, Mrs. Aurandt and Clymer. *See* RBI Opposition, Exhibit Z, pp 1 (first Whereas clause) and 4 (Section 2(e), defining the term "Aurandt Board"). In other words, whoever the so-called "insurgents" may have been, they elected essentially the same board as had been in place for years already. This does not suggest an uprising among the shareholders; to the contrary, it strongly suggests continuity. Of course, RBI has far more access than does Adams to information about the September 14, 1991 meeting. The fact that RBI has declined to be forthcoming about that meeting may be read to mean that that information is not helpful to RBI's claims here.

^{6/} Among other points, while Linton retained control of the corporate seal, it appears from RBI's minutes that Parker simply had another seal created so that he could purport to issue stock. RBI Opposition, Exhibit Y, pp. 7, 14.

information on this score ^{2/} -- the answer to that question is discernible by piecing together two disparate items, one buried deep in the exhibits to RBI's Opposition, the other submitted as an amendment to RBI's renewal application almost three years ago.

12. The item buried in RBI's exhibits is a Settlement Agreement among Parker, Aurandt and others which supposedly resolved a struggle for control of RBI. *See* RBI Opposition, Exhibit Z. That Settlement Agreement was supposedly attached to the minutes of an RBI directors' meeting dated August 7, 1992. However, no copy of that agreement was included among the copies of the minutes initially reviewed by Adams or produced to Adams at the Presiding Judge's order. Thus, the first time that Adams had any opportunity to review that Settlement Agreement was when it arrived as Exhibit Z to RBI's November 19, 1999 Opposition.

13. According to the Settlement Agreement (which was signed by, *inter alia*, Parker), "on October 15, 1991, Parker as President or Executive Vice-President issued Certificates 2-43 to the New Shareholders (which Certificates were amended by Certificates 1A-50A)". RBI Opposition, Exhibit Z, p. 2. The capitalized term "New Shareholders" was defined in the Settlement Agreement as "Holders of New Common Stock of RBI as represented by Certificates 2-43 as amended by Certificates 1A-50A." *Id.* at p. 8. Thus, the Settlement Agreement tells us what certificates were issued by Parker on October 15, 1991; it just doesn't tell us who they were issued to or how many shares they represented.

14. That part of the puzzle is solved by reference to an amendment to RBI's

^{2/} RBI has still not produced its stock register, notwithstanding Adams's repeated requests for it and the Presiding Judge's explicit order that RBI turn that information over. Since RBI has included, as Exhibit L to its Opposition, one page of what appears to be a stock register, presumably RBI has the rest of the register readily available. Its failure to produce the register thus far raises further questions about RBI's candor in this proceeding.

renewal application which was filed on February 3, 1997. *See* Attachment J. That amendment included a listing of all RBI shareholders, organized according to share certificate number. The February, 1997 amendment also indicated how many shares of stock each certificate represented. As a result, it is possible to determine: (a) the total number of shares of stock issued by Parker in October, 1991; (b) which individuals held which Share Certificates, including Share Certificates 1A through 50A, *i.e.*, the certificates which Parker took it upon himself to issue in October, 1991; and (c) how many shares each shareholder obtained from Parker in October, 1991.

15. Before we perform that analysis, though, some prefatory information will be useful. In its August, 1991 316, RBI had gone to great lengths to emphasize that no real transfer of control was being proposed, because certain shareholders who had exercised control of RBI prior to its bankruptcy would continue to own more than 56% of RBI's stock. *See* RBI Opposition, Exhibit J, p. 9. RBI went so far as to provide a separate listing of those previously-approved shareholders, showing the percentage of RBI each would hold after the consummation of the transaction proposed in the August, 1991 316. *Id.* The August, 1991 316 unquestionably establishes that RBI was aware of and extremely sensitive to the importance of crossing the 50% ownership barrier, and the transactions proposed in that application were clearly designed *not* to cross that barrier. Parker signed the August, 1991 316.

16. With RBI's and Parker's awareness of and sensitivity to that 50% barrier in mind, let us review Parker's actions in October, 1991.

17. First, we can determine how many RBI shares Parker issued simply by adding up the total number of shares represented by Share Certificate Numbers 1A through 50A.

Adams calculates that total to be 363,549 shares. ^{8/}

18. Next, by referring to RBI's February, 1997 amendment we can determine how many of those shares were issued to the previously-approved RBI shareholders identified in the August, 1991 316. The following page consists of a summary table of that information.

^{8/} Apparently, RBI's principals understood that, as a result of RBI's bankruptcy reorganization, *all* of RBI's previously outstanding stock had become null and void. Pursuant to that understanding, Parker seems to have believed that the stock he was issuing in October, 1991 constituted *all* of the stock of the reorganized RBI. RBI Opposition, Exhibit Y, p. 10.

<u>Shareholder</u>	<u>Share Cert. Number</u>	<u>Number of Shares Represented by Cert.</u>
Henry N. Aurandt and Helen Aurandt	02A	17,537
Robert A. Denby	03A	19,922
Irvin Cohen	04A	12,067
Roger and L. Carole Longenecker	05A	15,413
Ralph Tietbohl	06A	12,874
Patricia Verbinski	07A	16,045
Robert and Fay Clymer	08A	5,943
Sergio and Penelope Proserpi	09A	10,194
Daved and Barbara Mann	13A	9,977
Edward and Noni Fischer	14A	12,121
Bernard Gerber	15A	2,338
Jack and Nancy Linton	16A	2,338
Catherine Morrow	17A	5,333
Donald and Mary Lu Stoudt	18A	1,350
Joanne V. Van Roden ^{9/}	19A	3,507
Albert Boscov	20A	3,243
John and Jill Bower	21A	8,014
Henry Aurandt, Trustee	22A	6,331
Tietbohl Retirement Plan	23A	1,809
Proserpi Profit-sharing Plan	24A	1,809
Larry Rotenberg UGMA D.A. Rotenberg	25A	362
Gerber Retirement Plan	26A	1,086
Linton Retirement Plan	27A	1,086

^{9/} No Joanne V. Van Roden is listed as a previously-approved party in the August, 1991 316. However, a Joanne V. Davis is listed there. Adams assumes for purposes of the calculation in the text that Ms. Van Roden is one and the same as Ms. Davis, and that shares issued to Ms. Van Roden were therefore issued to a previously-approved party.

Adding up the total number of shares issued by Parker, in October, 1991, to previously-approved RBI shareholders, Adams comes up with 170,699 shares. ^{10/}

19. As noted above, by our calculation the total number of shares issued by Parker in October, 1991 was 363,549 shares. From there, it is easy to calculate the total percentage of those shares which were issued to previously-approved RBI shareholders: 170,699 divided by 363,549 is **46.95%**. That is, needless to say, considerably less than a majority.

20. Adams notes that the figures which it uses, above, correspond almost exactly to the stock figures listed in RBI's Ownership Report filed in April, 1992 -- six months *after* the stock had been issued. See RBI Opposition, Exhibit GG. As a result, Adams is reasonably confident in the validity and accuracy of its calculations.

21. Thus, contrary to RBI's current protestations, through his unilateral issuance of RBI stock in October, 1991, Parker caused control of more than 50% of RBI's stock to pass to parties who had not previously been approved by the Commission in a long-form application. ^{11/}

C. The October 30, 1991 meetings

22. Having stacked the shareholder deck in his own favor as of October 15, 1991 (presumably because the previously-approved RBI principals had demonstrated in the September 14, 1991 meeting that they did not wish to continue their relationship with Partel),

^{10/} The remaining new Share Certificates (*i.e.*, other certificates from 1A through 50A) are listed as being held by various "new" shareholders, including Partel, STV Reading, Massey, Busby, the Pavloffs and others.

^{11/} This information would presumably be almost immediately apparent from a review of RBI's stock register. Adams suspects that RBI's failure thus far to produce that register -- notwithstanding the Presiding Judge's explicit order that it do so -- may be attributable to this factor.

Parker then called a shareholder meeting for October 30, 1991, two weeks later. At that meeting -- which was loudly protested by Linton and Aurandt, among others -- Parker took formal control of RBI. *See* RBI Opposition, Exhibit V. He presided over the meeting, removed RBI's directors and nominated a new slate of directors, who were duly elected by the shareholders to whom Parker had issued shares. Those shareholders included at least one corporation -- STV Reading, Inc. -- which had not been proposed as a shareholder in the August, 1991 316. Not surprisingly, the minutes of the October 30, 1991 meeting indicate that the votes of STV Reading were cast by Parker as that corporation's president. (Naturally, Parker also cast the votes of Partel, to which he had issued stock.) The newly-elected directors included Parker and Clymer from the previous board, and Frank McCracken, C. Meyer Rose and Irvin Cohen. In other words, a majority of the board changed in that one meeting. As a result, the board which had terminated the Partel Agreement was suddenly replaced by a board nominated by Parker himself.

23. Immediately after the shareholders meeting, the newly-elected directors met. RBI has thus far failed to produce for Adams copies of the minutes of that meeting, although Adams did review those minutes when provided the opportunity to do so. The new directors immediately began to exercise control over the corporation, removing all former officers (including Linton) and electing Parker as, in effect, the sole corporate officer.

D. The November 13, 1991 315 application

24. Having unilaterally, and without prior Commission approval, effectuated a transfer of control, Parker was then faced with the problem of how, *post hoc*, to try to legitimize his actions. Two weeks after his October 30, 1991 coup, Parker caused a long-form Form 315 transfer of control application ("November, 1991 315") to be filed. All three

portions (transferor, licensee, and transferee) were signed by Parker. Nowhere in the application was there even a hint that RBI's shareholders, officers and directors had undergone any change at all since August, 1991.

25. To the contrary, the only "explanation" for the filing of the November, 1991 315 appeared in the second paragraph of Exhibit 2, which read in relevant part as follows:

. . . Because the stock ownership of [RBI], the proposed transferee, will be different from the stock ownership of [RBI] prior to bankruptcy, the instant application is being filed on FCC Form 315, the Long Form application. ^{*/}

^{*/} Please note that on August 14, 1991, [RBI], as debtor-in-possession, filed an application on FCC Form 316 requesting the transfer of control of WTVE(TV) to [RBI] (FCC File No. BTTCT-910814KE). The Commission granted the application on August 27, 1991. Because of the circumstances surrounding the stock ownership of [RBI], as explained in Exhibit 4 to the instant application, the parties did not consummate the transaction.

See RBI Opposition, Exhibit Q. The Exhibit 4 referred to in the footnote to Exhibit 2 read, in its entirety, as follows:

Four of the proposed stockholders of [RBI], Harvey L. Massey, Paul Pavloff, Stella Pavloff and Alfred W. Busby, have sued Dr. Henry Aurandt, a present and proposed stockholder of [RBI], in U.S. District Court for the Eastern District of Pennsylvania. On July 31, 1991, a judgment was entered in favor of Mr. Massey, Mr. Pavloff, Ms. Pavloff and Mr. Busby against Dr. Aurandt, and the court garnished Dr. Aurandt's [RBI] stock to satisfy the judgment. If Dr. Aurandt's [RBI] stock is used to pay the judgment, his stock, which will represent 13.98% of the outstanding stock if the instant application is approved, will be distributed to the four stockholders referenced above.

Id. These "explanation[s]" failed to mention that Massey, Busby and the Pavloffs had *already* been issued stock by Parker in October, 1991 and had already voted as RBI shareholders (through proxies given to Parker) at the October 30, 1991 meeting. See RBI

Opposition, Exhibit V, p. 1. In fact, the garnishment mentioned in the exhibit appears to be, at most, an after-the-fact justification for the filing of the Long Form application, since the stock which Parker actually distributed in October, 1991, independent of the garnishment matter, effectuated a transfer of control. Reference to the garnishment appears to have been nothing more than a red herring, designed to create the impression that some intervening circumstance had necessitated the filing of a Long Form application. ^{12/}

26. By February, 1992, the November, 1991 315 had still not been granted. On February 7, 1992, counsel for RBI filed an amendment to the application. In her transmittal letter, she offered further "explanation" as to why RBI had filed a long-form Form 315 application:

In addition, if the foregoing application is granted, the stock ownership of [RBI] will be different from the stock ownership of [RBI] prior to bankruptcy. As referenced in [RBI]'s application, in order to adequately finance the corporation, [RBI] will issue additional shares of stock to reflect the addition of several new shareholders. Consequently, the above-referenced application was filed on FCC Form 315, the Long Form application.

RBI Opposition, Exhibit S. Since the application as originally filed (and as quoted above) did not include any claim that the use of Long Form application arose from any need to "adequately finance the corporation", it is not clear what this letter was referring to. In any event, this letter underscores RBI's awareness of the need to obtain Commission approval *before* any transfer of control, and it illustrates again RBI's efforts to assure the Commission that no such transfer had already occurred or would occur prior to such approval.

^{12/} The irrelevance of the purported garnishment is further underscored by the fact that the 13.98% stock interest mentioned in the exhibit was not otherwise reflected in the November, 1991 315. That is, if the ownership of that particular bloc of stock were really the subject of any question, presumably that question would have been apparent elsewhere in the application. It was not. Moreover, in RBI's April, 1992 Ownership Report, RBI specifically advised the Commission that that bloc of stock had not even been issued. See RBI Opposition, Exhibit GG, Exhibit 2.

E. The February, 1992 shareholder meeting

27. On February 4, 1992 Parker convened a meeting of RBI's October, 1991-vintage shareholders. *See* RBI Opposition, Exhibit Y. Objections to that meeting were again interposed by counsel on behalf of original RBI principals, but those objections were brushed aside by Parker, who presided over the meeting. *Id.* During the meeting, the directors who had been "elected" at the October 30, 1991 meeting (at Parker's nomination) were "re-elected". *Id.* This meeting occurred three days before RBI's letter (described in Paragraph 26, above) to the Commission in which RBI created the misimpression that the ownership and governance of RBI were still as they had been in August, 1991.

F. The consummation letter and the April, 1992 ownership report

28. On April 10, 1992, counsel for RBI filed a letter, referencing the November, 1991 315, which notified the Commission that the transfer of control "was consummated on March 12, 1992." RBI Opposition, Exhibit U.

29. On April 16, 1992, RBI filed an Ownership Report (FCC Form 323) to report the consummation of the transfer of control authorized with the grant of the November, 1991 315. That Ownership Report was signed by Parker. It contained no reference to the Partel Agreement. According to the Report, the directors of RBI were still Aurandt, Linton, Clymer, Fischer and Parker, and Linton was still the Secretary, notwithstanding the October 30, 1991 and February 4, 1992 meetings -- over which Parker had presided. The stock distribution described in the table of shareholders in the Ownership Report corresponds, with only very minor exceptions, to the stock distribution which can be seen to have resulted by Parker's October 15, 1991 issuance of Share Certificate Nos. 1A through 50A. *See* Paragraphs 17-19, above.

G. Events subsequent to April, 1992

30. In April, 1993, RBI filed a letter (over Parker's signature) certifying that the information set forth in the April 16, 1992 Ownership Report remained accurate, even though the Parker-led board, first "elected" in October, 1991, continued to control the corporation but had never been reported to the Commission.

31. In March, 1994, in connection with its application for renewal of license, RBI filed an updated Ownership Report in which it identified its directors as Parker, Clymer, McCracken, Rose, Cohen (*i.e.*, the directors "elected" in October, 1991), plus two new directors.

II. Discussion

32. Adams apologizes for the foregoing extensive discussion of facts, which would normally be unnecessary in a reply pleading. But in this case such a discussion is necessary because RBI, in its Opposition, has provided significant new information not previously available to Adams. From that information it is safe to say that RBI has engaged, and continues to this day to engage, in gross misrepresentation or lack of candor.

A. The Partel Agreement itself constituted a transfer of control of Station WTVE(TV) to Parker.

33. First, there is the matter of the Partel Agreement itself and Parker's operation of RBI's station pursuant to the Partel Agreement. RBI boldly states that "nothing within the four corners of the [Partel Agreement] . . . would suggest abandonment of control by [RBI]." RBI Opposition at 11, n. 7. As RBI itself acknowledges, the Commission has in a number of cases determined "control" of a broadcast licensee based on control of the licensee's finances and personnel. RBI Opposition at 6 (citing, *e.g.*, *Siete Grande*

Television, Inc., 11 FCC Rcd 21154 (Mass Media Bureau 1996)). The Partel Agreement on its face explicitly accorded authority over personnel to Partel/Parker. RBI Opposition, Exhibit G, Partel Agreement, p. 3, ¶3. And it also gave Partel/Parker the contractual right to "veto" *any* expenditure by RBI. *Id.* It is hard to imagine a more complete ceding of corporate control. As a result, the very existence of the Partel Agreement represents a transfer of control of RBI to Parker.

34. The Partel Agreement included provisions concerning potential future ownership of RBI stock. Because of that, the Partel Agreement was required, by Section 73.3613 of the Commission's rules, to be submitted to the Commission within 30 days of its execution. The Partel Agreement was ratified by RBI's directors in August-September, 1989 but, to the best of Adams's knowledge, no copy of the Partel Agreement was submitted to the Commission prior to the instant proceeding. In fact, RBI did not even advise the Commission of the existence of the Partel Agreement until March, 1994, almost five years after RBI and Partel implemented that agreement. ^{13/}

35. Since the Partel Agreement on its face raised serious questions about apparent unauthorized transfer of control, it is understandable why Parker may have been reluctant to alert the Commission to the Partel Agreement.

^{13/} RBI seems to suggest that it was not obligated to report the Partel Agreement until the Bankruptcy Court had approved it. RBI Opposition at, *e.g.*, 11, n. 6. Even if this novel reading of the Commission's reporting rules were valid (which Adams does not believe it to be), RBI would have been obligated to report the Partel Agreement in February, 1991, *i.e.*, within 30 days of the Bankruptcy Court's effective approval of the Partel Agreement in January, 1991. *See* RBI Opposition at 11. As noted, RBI did *not* report or submit a copy of the the Partel Agreement to the Commission at that time, or at any time for more than three years thereafter.

B. The October 15, 1991 issuance of stock by Parker constituted an unauthorized transfer of control of RBI.

36. If RBI's calculations are correct, Parker personally engaged in an unauthorized transfer of control in October, 1991 when he apparently issued more than 360,000 shares of stock, the effect of which was to give at least 53% of RBI's outstanding stock to individuals or entities who had not previously been approved by the Commission on a long-form application. This could not have been an unwitting, inadvertent oversight on Parker's part: the August, 1991 316 (which had been signed by Parker) reflected an obvious awareness and sensitivity to the need to assure that more than 50% of RBI's stock remain in the hands of parties which had been in control of RBI prior to its bankruptcy proceeding. The same awareness and sensitivity appeared in the November, 1991 315, all three portions of which had been signed by Parker.

37. RBI, and Parker, had ample opportunity in the context of RBI's Opposition to provide details and explanations concerning Parker's October, 1991 issuance of stock. They declined to do so. In fact, even though Parker's conduct and intent were the central focus of Adams's Motion, Parker failed to provide any statement at all concerning the allegations. But Adams was nonetheless able to ferret through hundreds of pages of materials submitted by RBI and to assemble clear documentary support for the conclusion that Parker personally engaged in an unauthorized transfer of control through his issuance of stock. Adams submits that its findings in this regard establish that an unauthorized transfer of control occurred when Parker issued RBI stock on October 15, 1991.

C. Even if the RBI situation in the Fall, 1991 were deemed a private proxy fight among shareholders, RBI failed to comply with the Commission's Policy Statement governing such situations.

38. But let us respect, *arguendo*, RBI's stonewall strategy relative to the issuance of stock in October, 1991, and let us therefore assume, also *arguendo*, that RBI is correct when it says that "Adams has not shown, nor can it show, that . . . there was a greater than 50% change in ownership of the company prior to the Commission's approval of the company's long-form transfer of control application." RBI Opposition at 23. In RBI's view, what happened in the Fall of 1991 was nothing more than a proxy fight for control of RBI's board of directors. According to RBI, such a contest is outside the Commission's jurisdiction, and nothing at all needed to be filed with the Commission.

39. That argument is wrong. The Commission has adopted a Policy Statement governing precisely this area of corporate control. *In re Tender Offers and Proxy Contests*, 59 RR2d 1536 (1986). There the Commission recognized that gradual changes in a board of directors over a period of years may not constitute a transfer of control requiring prior Commission approval. But the Commission specifically acknowledged that it had no precise formula for ascertaining the locus of control in proxy situations. 59 RR2d at 1542-1545. And the Commission specifically distinguished gradual changes in board membership from "precipitous" changes -- *i.e.*, sudden changes of all or a majority of directors -- which were found to be transfers of control requiring prior approval. 59 RR2d at 1544.

40. Where a precipitous change in control of the board is to occur, the Commission concluded that the licensee is required to submit a short-form Form 316 transfer of control application (as opposed to a long-form Form 315 transfer of control application). 59 RR2d at 1551-52. In that application the qualifications of the nominees to the board must

be disclosed for Commission review. The Commission expressed particular interest in whether any of the nominees had been the subject of "adverse findings regarding law violations", 59 RR2d at 1551.

41. This policy on proxy fights has been in place continually since 1986. Thus, if RBI's situation in the Fall, 1991 really constituted a proxy fight as RBI claims, RBI was required to submit to the Commission a short-form transfer of control application identifying the proposed directors and providing information concerning, *inter alia*, any relevant "adverse findings regarding law violations" -- including, presumably, full disclosure of Parker's own history of adjudicated misconduct before the Commission. RBI never filed such an application. In fact, RBI never even bothered to advise the Commission of the new board of directors said to have been elected in October, 1991, until almost three and one-half years later.

42. In view of these facts, RBI's arguments concerning the supposed legitimacy of the supposed proxy fight is unavailing. Even if this were accurately viewed as a proxy fight, RBI obviously failed to comply with the Commission's well-established policy governing such situations. RBI engaged in an unauthorized transfer of control.

D. The record demonstrates that RBI has engaged in repeated, and continuing, misrepresentation and/or lack of candor.

43. Let us briefly review the facts yet again. In 1989 RBI enters into the Partel Agreement, which on its face cedes substantial control of RBI's operations to Partel/Parker. Because the Partel Agreement expressly provides for the acquisition of stock (and a large block of stock, at that) by Partel, that agreement is required (by Section 73.3613) to be filed promptly with the Commission. Yet RBI fails even to mention the existence of the Partel

Agreement to the Commission until some five years after it was entered into.

44. And then, having demonstrated (in the August, 1991 316) an awareness that prior Commission approval is necessary before new, unapproved shareholders can acquire more than 50% of a licensee's stock, Parker proceeds without Commission approval to issue stock so that at least 53% of RBI's stock is in "new" hands.

45. And then Parker, himself wielding (through Partel and STV Reading, Inc.) the largest single block of that newly-issued (by Parker) stock, calls a meeting, puts himself in charge, and causes a new board of directors to be elected -- all without prior notification to or approval from the Commission.

46. And then Parker signs all three portions of a long-form transfer of control application seeking approval of the changes which had already happened a mere two weeks earlier. In that application he fails to mention anything about the fact that "new" stock had already been issued and that the "new" shareholders had already elected a "new" board. Instead, the application is clearly drafted to create the misimpression that the transactions described in it have yet to be consummated and will not be consummated absent Commission approval.

47. While RBI seems to assert that Parker's failure to mention these salient facts was a matter of "inadvertence" (*see, e.g.*, RBI Opposition at 30), it is impossible to accept that notion. This was not a situation where gradual corporate changes took place over time, so that Parker might be forgiven for not having recognized that a transfer had occurred. Rather, the situation here came to a head over a relatively brief two-to-three-month period, and it was characterized by a number of watershed moments: for example, Parker's October 15, 1991 issuance of more than 360,000 shares of stock, or Parker's convening of a